

AUGUSTA DIVISION

Defendant.

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CV 115-096

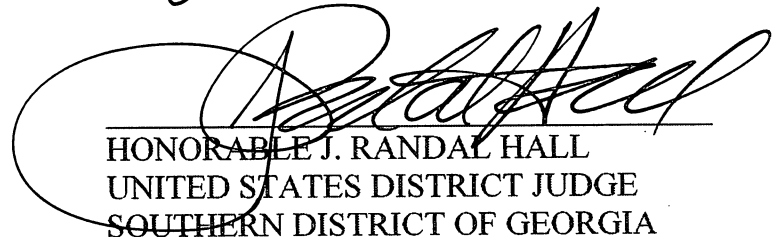
ORDER

The Magistrate Judge thoroughly addressed the issues raised by the Acting Commissioner in her initial briefing and in her objections to the R&R. The Court specifically rejects the contention that an error at step two in the sequential process is “harmless.” (Doc. no. 16, p. 2.) The Acting Commissioner cites to the general proposition of law in the Eleventh Circuit that a step two error may be harmless, but as the Magistrate

Judge explained, the ALJ's failure to consider Plaintiff's alleged back condition at step four is harmful, especially since the ALJ determined Plaintiff could perform light work including lifting up to twenty pounds. (See doc. no. 14.) As the Magistrate Judge correctly determined, the ALJ's finding that Plaintiff must use a cane at step four does not suggest the ALJ considered Plaintiff's back condition at step four. On the contrary, the ALJ expressly stated Plaintiff needed a cane because of "dizziness and poor balance." (Doc. no. 14, p. 10.) Consequently, the ALJ's failure to analyze Plaintiff's back condition at step two is not harmless error and necessitates a remand.

Accordingly, the Court **OVERRULES** the objections and **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion. Therefore, pursuant to sentence four of 42 U.S.C. § 405(g), the Court **REVERSES** the Acting Commissioner's final decision and **REMANDS** this case to the Acting Commissioner for further consideration in accordance with the Court's opinion.

SO ORDERED this 29th day of August, 2016, at Augusta, Georgia.


HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA